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NO.

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19__

PETER E. HALL,

Petitioner,

versus

RAFAEL BENET MELENDEZ,

Respondent.

OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

PEDRO J. VARELA
Counsel for Respondent
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Cayey, PR 00737
Tel. (809) 738-5189

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34 pp

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QUESTIONS PRESENTED

A. The prejudgment attachment procedure followed in this case complies with the requirements set forth by this Court and the Supreme Court of Puerto Rico since petitioner's liability appeared in authentic documents, to wit, the judgment and the file of the eviction case litigated in the same Court; a post deprivation hearing was held; and, in both instances, a judge entertained and decided the issues.

B. The petitions for writ of certiorari submitted by the petitioner herein in the Superior Court of Puerto Rico and in the Supreme Court of Puerto Rico to question the constitutionality of an ex parte order of prejudgment attachment issued by the District Court of Puerto Rico, the court of first instance, are barred by

the doctrine of laches, due to the time elapsed between the date of issuance of the attachment order and the request filed by petitioner to invalidate said order.

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Jurisdiction

The judgment sought to be reviewed was entered by the Supreme Court of Puerto Rico on February 23, 1994.

The jurisdiction of this Court to review this case is invoked under 28 U.S.C. 1258.

Statutes Involved

The constitutional provisions and statutes involved in this case are set forth below:

(1) "...nor shall any person...nor be deprived of life, liberty, or property, without due process of law..." United States Constitution, Fifth Amendment, Due Process Clause.

(2) "...nor shall any State deprive any person of life, liberty, or property, without due process of law..." United States Constitution, Fourteenth Amendment, Due Process Clause.

(3) "Rule 56. Provisional Remedies

"56.1 General Principles

"In every action, before or after entering judgment, and on motion of claimant, the court may issue any provisional order it may deem necessary to secure

satisfaction of the judgment. The court may order the attachment, garnishment, the prohibition to alienate, claim and delivery of personal property, receivership, and order to do or to desist from doing any specific act, or it may order any other measure it deems necessary, according to the circumstances of the case. In every case in which a provisional remedy is sought, the court shall consider the interests of all the parties and shall adjudicate as substantital justice may require.

"56.2 Notice

"No provisional remedy shall be granted, modified, set aside, nor shall any action be taken thereon without notice upon the adverse party and a hearing, except as provided in Rules 56.4 and 56.5.

"56.3 Bond

"A provisional remedy may be granted without the filing of a bond in any of the following cases:

"(1) If it appears from public or private documents, as defined by law, signed before a party authorized to administer oaths, that the obligation may be legally enforced...

"(2)...

"(3) If a remedy is sought after judgment is entered.

...

"In all other cases, the court shall require the filing of a bond sufficient to secure all the damages arising from the remedy. However, a defendant or respondent may retain the possession of the personal property attached by plaintiff or claimant by filing a bond for the amount the court

deems sufficient to secure the value of said property. If the defendants furnishes a bond for the amount attached, the attachment will be left without effect.

"56.4 Attachment or prohibition to alienate.

"If the requirements of Rule 56.3 have been met, the court shall issue, on motion ex parte of a claimant, an order of attachment or of prohibition to alienate. The attachment and prohibition to alienate real property shall be effected by recording them with the Registry of Property and notifying the defendant. In case of personal property, the order shall be carried out by depositing the personal property in question in court or with the personal designated by it under the claimant's responsibility..." Puerto Rico Rules of Civil Procedure of 1979, 32 L.P.R.A. App.III, Rule 56.

Statement of Facts

On August 3, 1992, the District Court, San Juan Part, ordered the attachment of the petitioner's automobile valued at $3,500.00, in case Civil Num. 92-10289 (501), concerning an action to collect debt. Not in agreement with the attachment, the petitioner submitted a Motion for Dissolution of Attachment and a Motion for Relief from Judgment and New Trial in case Civil Num. 92-1170 (502) between the same parties, concerning eviction from his office for failure to pay the amount of $3,640.00. On October 2, 1992, an urgent evidentiary hearing was held in order to discuss the objections to the attachment made by Atty. Hall. Subsequent to the holding of said hearing, the District Court declared, by order of December 22, 1992, that the attachment had been carried out in conformance with law.

While the procedings continued in the action to collect debt, it was not until October 29, 1993, that Atty. Hall presented a petition of certiorari before the Superior Court, San Juan Part, requesting the review of the order entered December 22, 1992. Having elapsed ten (10) months since the entering of said order, the Superior Court denied the petition for reason of laches. The Supreme Court of Puerto Rico also denied the writ.

ARGUMENT

A. The prejudgment attachment procedure followed in this case complies with the requirements set forth by this Court and the Supreme Court of Puerto Rico since petitioner's liability appeared in authentic documents, to wit, the judgment and the file of the eviction case litigated in the same Court; a post deprivation hearing was held; and, in both instances, a judge entertained and decided the issues.

From the outset, it should be noted that the Supreme Court of Puerto Rico on June 30, 1993, in the case of Rivera-Rodriguez & Co. v. Stowell, __ P.R.R. __ , 93 JTS 111 (1993), held, following Connecticut v. Doehr, 115 L. E2d 1, that Rule 56.4 of the Rules of Civil Procedure of Puerto Rico is unconstitutional since it allows prejudgment attachments without

previous notificacion of a hearing to the affected party where the petitioner is not a lienholder or has not alleged or demonstrated extraordinary circunstances for an ex parte attachment order issue or has not alleged or proved the probability of succeeding through documentary evidence that reflects that the amount claimed is owed by the affected party. Also, the Court held, on December 15, 1993, in the case of Feliciano Figueroa v. Toste-Piñero, _____ P.R.R _____, 93 JTS 161 (1993), that there is no need for a bond to be set in a prejudgment attachment procedure if it can be ascertained from reliable documentary evidence that there is a high probability that judgment will be granted in movant's favor.

In this case, petitioner was evicted from his office for failure to pay rent in the amount of $3,640.00.

After having been evicted, another action was instituted by respondent against herein petitioner for the amount of money he owed. An attachment order was issued based upon the eviction case and no bond was required since there was great probability that the judgment would be against herein petitioner. Petitioner's car valued at $3,500.00 was attached.

All of the constitutional requirements to safeguard petitioner's right as set forth by this Court were followed in this case. The order was issued under Rule 56.3 of the Rules of Civil Procedure of Puerto Rico which authorizes a prejudgment attachment without previous notification or bond if it appears from public or private documents that the obligation may be legally enforced or if a remedy is sought after judgment is entered.

Thus, the Doehr and Mitchell v. W.J. Grant Co. requirements were complied in the instant case.

B. The Petition Should be Dismissed Because of Laches

The petitioner did not set forth any reasons before the Superior Court, San Juan Part, as neither before the Supreme Court of Puerto Rico, to justify his delay in seeking review of the order entered by the District Court affirming the attachment. Before said neglect, it is unavoidable to conclude that the Superior Court and the Supreme Court of Puerto Rico did not commit error in dismissing, for reason of laches, the petition of certiorari presented before said courts to review the mentioned order.

The above holds since in Puerto Rico the laws do not provide a procedural term for filing a classic certiorari and it has been held that

under such circunstances the doctrine of laches is applicable. See, e.g. Torres Arzola v. Police of Puerto Rico, 117 P.R.R. 245 (1986); Dumont v. Inmobilaria Estado Inc., 113 P.R.R. 527 (1982); People v. Superior Court, 81 P.R.R. 874 (1960). Under this doctrine, a certiorari will be denied if the delay in filing the same is undue and unjustified.

In this case, the car was attached on August 3, 1992. Herein petitioner filed a motion requesting the dissolution of the attachment in the case concerning the eviction for his failure to pay his office rent. On October 2, 1992 a hearing was held regarding herein petitioner's objections to the attachment and the motion was denied on December 22, 1992. Ten months afterwards, on October 29, 1993, herein petitioner presented a petition for certiorari

before the Superior Court, San Juan Part, requesting review of the order denying his objections. The court denied the petition for reason of laches. The Supreme Court of Puerto Rico affirmed said decision on the same grounds. There is no question that the lapse of time was great in this case, without any justification presented by the petitioner, and thus, the petition was correctly dismissed, as should be done by this Honorable Court, since the doctrine of laches is applicable. People v. Superior Court, supra.

Appendix

Copies of the order of attachment dated August 3, 1992, of the District Court of Puerto Rico, San Juan Part; of the judgment dated November 9, 1993, of the Superior Court of Puerto Rico, San Juan Part; and of the order dated February 23,1994, of the Supreme Court of Puerto Rico sought to be reviewed in this case are attached to this petition below:

IN THE DISTRICT COURT OF PUERTO RICO

SAN JUAN PART

RAFAEL BENET MELENDEZ	:	CIVIL NUM.
PLAINTIFF	:	92-10289 (503)
VS	:	RE:
PETER E. HALL	:	ACTION TO
DEFENDANT	:	COLLECT DEBT
.....	:	

O R D E R

Having seen the motion requesting the securing of satisfaction of judgment and having examined the complaint filed in the present case, the Court orders the securing of the judgment that may be rendered in favor of the plaintiff, by means of the attachment of personal and real property of the defendant sufficient to cover the amount claimed.

The plaintiff is exempted from the posting of a bond for the reason that the liability of the defendant appears in authentic documents, the judgment and the file of case Civil Num. 92-1170 (505).

The clerk is ordered to issue the necessary writs to carry out the present order and in the event of the attachment of personal property, there is designated as depositary the person whose residential and business address and telephone is as follows: Enrique Velez, Apt. B-6, Street #2, Viromar, Luquillo, P.R. 00773, Tel. 889-2701, with whom shall be deposited the personal property that may be attached, as a result of this order, under the responsibility of the claimant.

RECORD AND NOTIFY.

Given in San Juan, P.R., on August 3, 1992.

/s/ YVONNE FELICIANO ACEVEDO
DISTRICT JUDGE

[petitioner's translation]

IN THE SUPERIOR COURT OF PUERTO RICO

SAN JUAN PART

RAFAEL BENET MELENDEZ	*	CIVIL NUM:
Plaintiff-Respondent	*	KPE93-684
vs.	*	(904)
PETER E. HALL	*	RE:
Defendant-Petitioner	*	CERTIORARI
	*	(Certiorari to
	*	review Order
	*	of District
	*	Court, Civil
	*	Num. 92-1170)
	*	

JUDGMENT

To the foregoing petition of Certiorari, DENIED for laches.

RECORD AND NOTIFY.

Given in San Juan, Puerto Rico, on November 8, 1993.

/s/ ARNALDO LOPEZ RODRIGUEZ
SUPERIOR JUDGE

CERTIFIED:
PAULITA SANTIAGO CARTAGENA
CLERK OF THE COURT

BY:

ASSISTANT CLERK

NOTIFICATION OF JUDGMENT

The clerk who subscribes gives notice to you that this court rendered judgment in the above-captioned case on date of November 8, 1993, that it has been duly recorded and filed in

the record of this case, from which you may further inform yourself of the terms of the same.

And, you being or representing the party affected by the judgment, from which you may present an appeal, I direct to you this notice, having filed in the record of this case a copy of it on date of November 9, 1993.

San Juan, Puerto Rico, on November 9, 1993.

/s/ Paulita Santiago Cartagena
Clerk

By: Maria Padilla
Assistant Clerk

[petitioner's translation]

IN THE SUPREME COURT OF PUERTO RICO

Rafael Benet Melendez	*	
Plaintiff-Respondent	*	Num.
v.	*	CE-93-740
Peter E. Hall	*	
Defendant-Petitioner	*	Certiorari
	*	

ORDER

In San Juan, Puerto Rico, on February 18, 1994.

Essentially, the petitioner maintains in his allegations of error that the attachment ordered of his automobile on August 3, 1992, is unconstituional in light of the rule of jurisprudence expressed by this Court in Rivera Rodriguez v. Stowell, opinion of June 30, 1993. The petitioner

maintains that said attachment order was issued without prior notice, without the holding of a hearing, and without the posting of a bond. He sets forth that said attachment was not in conformance with law, since in the action of eviction his liability for the alleged debt was not adjudicated.

On date of August 3, 1992, the District Court, San Juan Part, ordered the attachment of the petitioner's automobile in case Civil Num. 92-10289 (501), concerning an action to collect debt. Not in agreement with the attachment, the petitioner submitted a Motion for Dissolution of Attachment and a Motion for Relief from Judgment and New Trial in case Civil Num. 92-1170 (502) concerning eviction for failure to pay.

It appears from the record before

us that on October 2, 1992, an urgent evidentiary hearing was held in order to discuss the objections to the attachment made by Atty. Hall. Subsequent to the holding of said hearing, the District Court declared, by order of December 22, 1992, that the attachment had been carried out in conformance with law. While the proceedings continued in the action to collect debt, it was not until October 29, 1993, that Atty. Hall presented a petition of certiorari before the Superior Court, San Juan Part, requesting the review of the order entered December 22, 1992. Having elapsed ten (10) months since the entering of said order, the court denied the petition for reason of laches.

The petitioner did not set forth any reason before the Superior Court,

San Juan Part, as neither does he before us, to justify his delay in seeking review of the order entered by the District Court affirming the attachment. Before said neglect it is unavoidable to conclude that the Superior Court did not commit error in dismissing, for reason of laches, the petition of certiorari presented before said court to review the mentioned order. See: Dumont v. Inmobiliaria Estado, Inc., 113 D.P.R. 406 (1982); Pueblo v. Tribunal Superior, 81 D.P.R. 904 (1960).

In accordance with the above expressed, the issuance of the requested writ is denied.

So decided the Court and certifies the Clerk of the Court. Associate Justices Rebollo Lopez and Hernandez Denton took no part.

/s/ Francisco R. Agrait Llado
Clerk of the Court

NOTIFICATION

I certify that in relation with the petition of certiorari the Court entered the accompanying order.

San Juan, Puerto Rico, on February 23, 1994.

/s/ Francisco R. Agrait Llado
Clerk of the Court

[By:]
Assistant Clerk

[petitioner's translation]

Respectfully submitted,

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April 9, 1994